RIGHTS OF PUBLIC IN ADMINISTRATIVE PROCEDURE BEFORE STATE ADMINISTRATIVE AGENCIES

Act 197, 1952, p 288; eff Sept 18.

AN ACT to prescribe the rights of the public in the administrative procedure before state administrative agencies; to provide for the promulgation of procedural rules and regulations; to provide for the hearing of contested cases, and rules of evidence with respect thereto; and to provide for decisions and orders of state agencies.

The People of the State of Michigan enact:

§ 3.560(21.1) Definitions.] Section 1. For the purposes of this act:

(1) "Agency" means any state board, commission, department, bureau or officer, authorized by law to make rules or to adjudicate contested cases, except the workmen's compensation commission, the employment security commission, the department of revenue, the public service commission and those in the legislative and judicial branches.

(2) "Rule" includes every regulation, standard, or statement of policy or interpretation of general application and future effect, including the amendment or repeal thereof, adopted by an agency, whether with or without prior hearing, to implement or make specific the law enforced or administered by it or to govern its organization or procedure, but does not include regulations concerning only the internal management of the agency and not directly affecting the rights of or procedures available to the public, nor such rules and regulations of the state department of

health as may be necessary during emergencies, floods, epidemics, invasion or other disasters; nor emergency rules, regulations and orders issued under section 16 of Act No. 61 of the Public Acts of 1939, as amended, being section 319.16 of the Compiled Laws of 1948; nor emergency rules, regulations and orders issued under section 22 of Act No. 326 of the Public Acts of 1937, as amended, being section 319.72 of the Compiled Laws of 1948[; nor to the necessity hearings by county road commissions and the state highway commissioner which are required by Act No. 352 of the Public Acts of 1925, as amended, being sections 213.171 to 213.199, inclusive, of the Compiled Laws of 1948].

(3) "Contested case" means a proceeding before an agency in which the legal rights, duties or privileges of a specific party or specific parties are required by law or constitutional right to be determined after an opportunity for an agency hearing.

§ 3.560(21.2) Adoption of rules governing formal and informal procedures; descriptive statements of procedures; notice of adoption, amendment or repeal.] Sec. 2. In addition to other rule-making requirements imposed by law:

(1) Each agency shall adopt rules governing the formal and informal procedures prescribed or authorized by this act. Such rules shall include rules of practice before the agency, together with forms and instructions.

(2) To assist interested persons dealing with it, each agency shall so far as deemed practicable supplement its rules with descriptive statements of its procedures.

(3) Prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the adopting agency shall so far as practicable, and in compliance with any other

applicable statutory requirement, publish or otherwise circulate notice of its intended action and shall send written notice to any person who has previously made a request in writing to the agency to be notified of any proposed new rule or change in rules and afford interested persons opportunity to submit data or views orally or in writing.

§ 3.560(21.3) Petition requesting promulgation, amendment or repeal of rule.] Sec. 3. Any interested person may petition an agency requesting the promulgation, amendment or repeal of any rule. Each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition.

§ 3.560(21.4) Contested cases; hearing, notice, powers of officer of agency, record; informal disposition of case.] Sec. 4. In any contested case all parties shall be afforded an opportunity for hearing after reasonable notice, in conformity with all applicable statutory requirements. The notice, in addition to complying with any other applicable statutory requirement, shall state the time, place and issues involved, and opportunity shall be afforded all parties to present evidence and argument with respect thereto. Any officer of any agency may administer an oath or affirmation to a witness in any matter before the agency, certify to official acts, and take depositions. The agency shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe [mechancially recorded testimony or] shorthand notes unless requested for purposes of rehearing or court review. Informal disposition with the approval of the agency may also be made of any contested case by stipulation, agreed settlement, consent order or default. Each agency shall adopt appropriate rules of procedure for notice and hearing in contested cases.

§ 3.560(21.5) Same; admission and exclusion of evidence; cross-examination; judicial notice and evaluation of evidence; referral of hearing to agency staff member.] Sec. 5. In contested cases:

(1) Agencies shall so far as practicable follow the rules of evidence applicable to proceedings in chancery cases, but may in their discretion admit and give probative effect to any evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, immaterial and unduly repetitious evidence.

(2) All evidence, including records and documents in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(3) Every party shall have the right of cross-examination [which shall include the right to cross-examine the author of any document prepared by or on behalf of or for the use of the agency and offered in evidence;] and shall have the right to submit rebuttal evidence.

(4) Agencies may take notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within their specialized knowledge. Parties shall be notified, either before or during the hearing or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical competence, and specialized

knowledge in the evaluation of the evidence presented to them. The provisions of this subsection shall not be construed as permitting an agency to take notice of any evidence contrary to existing statutory provisions applicable to such agency.

(5) Any hearing that is required to be conducted under the provisions of this act may be referred by said agency to a member of the staff of said agency who shall hear the evidence, prepare a record and file a report with all parties involved.

§ 3.560(21.6) Same; decision by officials of agency who have not heard or read evidence, procedure.] Sec. 6. Whenever in a contested case the officials of the agency who are by law to render the final decision have not heard or read the evidence, the decision, if adverse to a party to the proceeding other than the agency itself shall not be made until a proposal for decision, including findings of fact and conclusions of law, has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.

§ 3.560(21.7) Same; adverse decisions and orders.] Sec. 7. Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceedings shall be notified forthwith of the decision and order in person or by mail. A copy of the decisions and order and accompanying findings and conclusions shall be delivered

or mailed upon request to each party and to his attorney of record.

§ 3.560(21.8) Same; judicial review of final decision.] Sec. 8. (1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to judicial review thereof under this act; but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief or trial de novo, provided by law. In any proceeding in which alternative methods of appeal are available, any person desiring to take a cross appeal shall take said cross appeal proceeding in the same manner in which the original appeal has been taken.

(2) Proceedings for review shall be instituted by filing a petition in the circuit court in the county wherein appellant resides or has its principal place of business in Michigan or in the circuit court for Ingham county, within 30 days after personal service of the final decision of the agency or within 30 days after the mailing thereof, if notice is given by mail: Provided, however, That when a shorter period of time is specified by any statute as the period within which appeals may be taken from the decision of an agency, any appeal taken pursuant to this act must be filed within such shorter period. Copies of the petition shall be served personally or by registered mail upon the agency and all other parties of record. The court, in its discretion, may permit other interested persons to intervene.

(3) Within 30 days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceedings, the record may be shortened. Any party unreason-

ably refusing to stipulate to limit the record may be taxed by the court for additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(4) If, before the date set for hearing, application is made to the court for leave to present additional evidence to the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken upon such conditions as the court deems proper. The agency may modify its findings and decisions by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decisions.

(5) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court and depositions may on request of the person aggrieved, and in the discretion of the court, be addressed to members of the agency to determine whether they followed the procedures required by law. The court shall, upon request, hear oral argument and receive written briefs.

(6) The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(a) In violation of constitutional provisions; or

(b) In excess of the statutory authority or jurisdiction of the agency; or

(c) Made upon unlawful procedure; or

(d) Affected by other error of law; or

(e) Unsupported by competent, material, and substantial evidence in view of the entire record as submitted, or contrary to the overwhelming weight of the evidence; or

(f) Arbitrary or capricious.

§ 3.560(21.9) Appeal to supreme court.] Sec. 9. An aggrieved party may secure a review of any final judgment of the circuit court under this act by appeal to the supreme court. Such appeal shall be taken in the manner provided by law for appeals from the circuit courts in other civil cases.

§ 3.560(21.10) Supplemental nature of act.] Sec. 10. This act shall be supplemental to and shall not be in derogation of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.82, inclusive, of the Compiled Laws of 1948.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967.

NELLES *v.* BARTLETT, SUPERINTENDENT OF PUBLIC INSTRUCTION OF MICHIGAN, ET AL.

APPEAL FROM THE SUPREME COURT OF MICHIGAN.

No. 327. Decided October 9, 1967.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for a writ of certiorari, certiorari is denied.